

### REMARKS

Applicants are filing the instant Amendment in order to place the claims in condition for allowance. Applicants therefore request entry of the Amendment.

### Status of Claims

Claims 21-29 are pending in the application. Claims 21-29 have been rejected. Claims 21 and 23-26 have been amended. Amendments to claims 23-26 are clerical in nature and introduce no new matter. Support for amended claim 21 can be found throughout the application as originally filed and specifically in claim 22 in the preliminary amendment that was filed with the original application. Applicants assert that no new matter has been introduced.

New claims 30-37 have been added. Support for claim 30 can be found throughout the application as originally filed and specifically in claim 26 as originally filed. Support for claims 31-34 can be found throughout the application as originally filed and specifically in paragraph 48. Support for claim 35 can be found throughout the application as originally filed and specifically in paragraph 51. Support for claim 36 can be found throughout the application as originally filed and specifically in paragraph 53. Support for claim 37 can be found throughout the application as originally filed and specifically in paragraphs 56-57. Applicants assert that no new matter has been introduced.

Claims 22, 27, and 28 have been canceled without prejudice or disclaimer. In making this cancellation without prejudice, Applicants reserve all rights in these claims to file divisional and/or continuation patent applications.

### The Telephone Interview

Applicants wish to thank the Examiner, Dr. Jeffrey Parkin, for granting and attending the telephone interview, with Applicants' Representative, Dr. Cheryl Schindler,

Reg. No. 59,848 on December 19, 2007. In the interview, Applicants' Representative asserted that it would not require undue experimentation to generate and use auxotrophic *Listeria* mutants that are immunogenic, as examples of such strains were known in the art and the methods were widely available. No consensus was reached. The Examiner indicated that the claimed methods using dal/dat *Listeria* would be allowable but may require the filing of a terminal disclaimer.

#### **Request for Rejoinder of Withdrawn Species**

In the Restriction Requirement dated June 30, 2006, the Examiner required the election of a species from claim 26. Applicants complied and elected a cervical cancer cell on August 30, 2006. Applicants request rejoinder of a claim to the remaining species (claim 30; wherein said cancer cell is a melanoma cancer cell, breast cancer cell, or leukemia cell) if the generic claim is found to be allowable, as provided by 37 C.F.R. § 1.141. Applicants note that claim 30 relating to the three additional species is dependent on the generic claim.

#### **Double Patenting Rejections**

Applicants hereby offer to provide a terminal disclaimer to priority applications United States Patent Application Serial Number 08/972,902, now United States Patent 6,099,848, if necessary, upon indication by the Examiner of allowable claims.

#### **35 U.S.C. § 112 Rejections**

In the Advisory Action, the Examiner maintained his rejection of claims 21-29 under 35 U.S.C. § 112, first paragraph, as allegedly lacking support for the allegedly broad genus of auxotrophic attenuated *Listeria* strains. Applicants are claiming the use of only the dal/dat auxotrophic attenuated *Listeria* strain, for which there is description regarding its preparation and use in the examples described in paragraphs [0080]-[0110]. A skilled

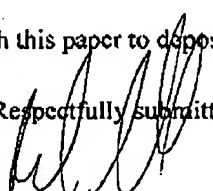
artisan would have no difficulty understanding based on the description provided in the instant specification that Applicants had possession of the dal/dat auxotrophic attenuated Listeria strain and would be able to make and/or use a dal/dat Listeria auxotroph for inducing an immune response against a cancer cell without undue experimentation. The Examiner stated in the Office Action dated June 14, 2007 that appropriately drafted claim language directed toward this embodiment [dal-/dat- double-mutant] would be acceptable (page 5). Applicants therefore request withdrawal of the rejections.

In view of the foregoing amendments and remarks, the pending claims are deemed to be allowable. Their favorable reconsideration and allowance is respectfully requested.

Should the Examiner have any question or comment as to the form, content or entry of this Amendment, the Examiner is requested to contact the undersigned at the telephone number below. Similarly, if there are any further issues yet to be resolved to advance the prosecution of this application to issue, the Examiner is requested to telephone the undersigned counsel.

Please charge any fees associated with this paper to deposit account No. 50-3355

Respectfully submitted,

  
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